IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SECOND DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

-

WRIT PETITION NO : 9933 of 2004

Between:

M. Sreenivasulu, s/o M. Kondaiah Chowdary,
Ananthapur New Bus Station, R/o H.No. 8/16, Industrial Estate,Kurnool,
Kurnool District.

..... PETITIONER

AND

1 The Regional Manager, APSRTC,
Ananthapur Region, Ananthapur.
2 The Divisional Manager, APSRTC,
Ananthapur Division, Ananthapur.
3 The Depot Manager, APSRTC, Ananthapur.
4 The Bus Station Manager, APSRTC, New Bus Stand, Ananthapur.

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction or particularly one in the nature of Writ of Mandamus, declaring the action of the 1st respondent in terminating the petitioner's licence for running KIOSKS STALL at New Bus Stand, Ananthapur by issuing impugned orders No. 02/122(36)/2001 RM 'A' dt. 8-6-2004 even though no such action is warranted and only to accommodate his own interested person for ulterior reasons, as illegal, arbitrary, violative of Article 14, 19, 21 and 300A of Constitution of India and consequently set aside the above stated impugned terminating proceeding of the 1st respondent with a further direction to the respondent to renew the petitioner's licence in terms of circular No. 83/2003-OPD(C) dt. 29-10-2003.

Counsel for the Petitioner:MR.K.RATHANGA PANI REDDY

Counsel for the Respondents : MR.P.V.SWAMY

The Court made the following :

ORDER:-

Heard the learned counsel for the petitioner and the learned Standing Counsel appearing on behalf of the respondent-Corporation.

The petitioner herein, who is a licensee in respect of Kiosks stall, New Bus Stand, Ananthapur, filed this writ petition, *inter alia*, challenging the impugned order, dated 08-06-2004, cancelling his licence.

The case of the petitioner is that he entered into lease agreement with the respondents for running 'Kiosks Stall' at New Bus Stand, Ananthapur, for a period of three years. After expiry of the said lease, the respondent-Corporation issued a circular dated 29-10-2003, granting extension of licence upto the year 2007. However, without any prior notice, the 1st respondent issued the impugned order dated 8-6-2004, cancelling the licence. Therefore, the action of the 1st respondent is illegal and arbitrary and consequently to direct the respondents to renew the licence in terms of Circular No.83/2003 OPD(C), dated 29-10-2003.

Learned counsel for the petitioner submitted that if the petitioner was found to be selling the items at higher prices, as per Clause 14 of the agreement the respondent ought to have levied penalty on the petitioner up to the maximum of Rs.1,000/-, on each occasion, but could not have cancelled the licence.

Learned Standing Counsel appearing on behalf of the respondents produced the entire file for concerning the issue.

From a perusal of the record, it is seen that the petitioner violated the conditions imposed in the agreement entered into between the petitioner and respondents. As per clause 14 of the agreement, if the licensee is found selling unauthorized items or found selling at prices higher than the approved prices or fails to sell sale and hygienic drinking water, or commits any breach of terms and conditions of the agreement, the Corporation concerned, as the case may be, are empowered to levy penalty upto a maximum of Rs.1,000/- on each occasion, and as per Clause 15 (e) of the agreement, the Corporation shall have the right to terminate the licence and forfeit the Security Deposit if the licensee encroaches space beyond

the allotted 6' X 6' space.

A reading of the show cause notice, dated 17-03-2003, reveals that the petitioner has been selling the items at higher rates. Except this, no other violation has been referred to in the said show cause notice. There is also no mention in the said show cause notice about the violation of clause 15 of the agreement. Further, even as per the record produced before this Court, there is no acknowledgment of service of the said show cause notice on the petitioner, prior to passing of the impugned order. In view of the same, the impugned action is totally vitiated and is liable to be set aside and is accordingly set aside.

Learned counsel for the petitioner submitted that since the lease period has expired, the petitioner is entitled for renewal of his licence. It is needless to observe that it shall always be open for the petitioner to file an application before the appropriate authority seeking renewal of the licence as per the Circular, dated 29-10-2003. On such application being filed, the respondents shall consider and dispose of the same in accordance with law.

Accordingly, the writ petition is allowed. No costs.

02-08-2004

GJ

To

1 The Regional Manager, APSRTC,
Ananthapur Region, Ananthapur.
2 The Divisional Manager, APSRTC,
Ananthapur Division, Ananthapur.
3 The Depot Manager, APSRTC, Ananthapur.
4 The Bus Station Manager, APSRTC, New Bus Stand, Ananthapur.

5 Two C.D. Copies.